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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JASMINE R. PRONOS, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

SKYONE FEDERAL CREDIT UNION

Defendant.

Case No.:

CLASS ACTION COMPLAINT

Jury Trial Demanded

Plaintiff Jasmine R. Pronos, individually and on behalf of the Class defined below of similarly situated persons, alleges the following against Defendant SkyOne Federal Credit Union (“SkyOne” or “Defendant”), based upon personal knowledge with respect to herself and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters:

NATURE OF THE ACTION

1
2 1. When dealing with consumer contracts, normally presented on a take-it
3 or-leave-it basis, legislatures around the nation have statutorily prohibited companies
4 from taking advantage of customers through unfair acts. In the context of consumer
5 fees, whether a fee is considered unfair frequently turns on a simple principle: if the
6 consumer will not receive a commensurate benefit from the fee, then the consumer
7 must have a practical opportunity to avoid the fee.

8 2. Nowhere can this principle be seen more clearly than in the banking
9 sector. Financial institutions earn profits by charging fees for their services. For
10 example, banks allow customers to write checks, and in return the customers promise
11 that there will be funds in their account to cover the check when it is deposited. If a
12 customer breaks this understanding and writes a check without the funds to cover it
13 (i.e., bounces a check), the bank will charge a fee to the customer that wrote the
14 check, which the customer could have avoided by ensuring sufficient funds were in
15 the account.

16 3. On the other side of the transaction, however, the recipient of the check
17 typically has no way to know whether a check he or she deposits is going to bounce.
18 Because the depositor could not have reasonably known the check was bad, it is
19 unfair to charge the depositor a fee for returning the check.

20 4. By contrast, banks and credit unions maintain highly sophisticated
21 systems for clearing checks and know, or should know, when the person that wrote
22 the check does not have sufficient funds to cover the check or has access to the
23 reasons that the check may not otherwise be valid.

24 5. Nevertheless, despite having these capabilities, SkyOne routinely
25 charges and collects what it refers to as “Returned Items Unpaid” fees. By charging
26 these Returned Items Unpaid fees, SkyOne unfairly targeted its members with
27 financial penalties for faulty checks the members had no hand in issuing. Plaintiff
28 was shocked when she was charged a fee because she did nothing wrong yet was

1 penalized by SkyOne. There was nothing Plaintiff could do to avoid — or even
2 anticipate — a Returned Items Unpaid fee assessed by SkyOne at the time the deposit
3 was returned.

4 6. By charging its members significant fees in situations where the
5 customer did nothing wrong and could not have avoided the fee through reasonable
6 diligence, SkyOne acted in a manner that is unfair, oppressive, and against public
7 policy.

8 7. Recent guidance from the Consumer Financial Protection Bureau
9 (“CFPB”) has reaffirmed the unlawful nature of SkyOne’s Returned Items Unpaid fee
10 policy. In October 2022, the CFPB issued a compliance bulletin stating that it is an
11 unfair act or practice for an institution to have a blanket policy of charging Returned
12 Items Unpaid fees anytime that a check is returned unpaid, irrespective of the
13 circumstances or patterns of behavior on the account; the CFPB noted that these fees
14 cause substantial monetary injury for each returned item, which consumers likely
15 cannot reasonably avoid because they lack information about and control over
16 whether a check will clear.¹

17 8. California, among other States, has recognized the unfair nature of these
18 fees and has recently amended the California Consumer Legal Remedies Act
19 (“CLRA”), Cal. Civ. Code § 17200, *et seq.*, to expressly prohibit “junk fees” where a
20 business reveals unavoidable fees later in the buying process. As California Attorney
21 General Rob Bonta noted in a press release: “These deceptive fees prevent us from
22 knowing how much we will be charged at the outset. They are bad for consumers ...
23 [and] cost Americans tens of billions of dollars each year.”²

24 9. Accordingly, Plaintiff, on behalf of herself and the Class and Subclass
25

26 ¹ Consumer Financial Protection Bulletin 2022–06, Unfair Returned Deposited Item Fee Assessment Practices (Oct. 26,
27 2022), available at: <https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-06-unfair-returned-deposited-item-fee-assessment-practices/> (last accessed April 14, 2024).

28 ² Attorney General Bonta’s Sponsored Bill to Ban Hidden Fees in California Signed into Law (Oct. 7, 2023),
<https://oag.ca.gov/news/press-releases/attorney-general-bonta%E2%80%99s-sponsored-bill-ban-hidden-fees-california-signed-law> (last accessed April 17, 2024).

(defined below), now seeks to hold SkyOne accountable for its unlawful and unfair policy, and seeks damages, restitution, and injunctive relief, as set forth below.

PARTIES

10. Plaintiff Jasmine Pronos is, and at all times mentioned herein was, an individual citizen of the State of Illinois residing in the County of Cook and held a SkyOne deposit account during the applicable limitations period. Ms. Pronos opened her SkyOne account in Illinois, and, therefore, her account is located there.

11. Defendant SkyOne is a credit union headquartered in Hawthorne, California. As of December 31, 2022, SkyOne had over 50,000 members and had over \$880 million in assets.³ SkyOne has several branches in California and offices in New York, Illinois, and Washington.

JURISDICTION AND VENUE

12. The Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5 million, exclusive of interest and costs. Upon information and belief, the number of class members is over 100, many of whom have different citizenship from Defendant. Thus, minimal diversity exists under 28 U.S.C. § 1332(d)(2)(A).

13. This Court has jurisdiction over Defendant because it operates in this District, is headquartered in this District, and a substantial part of the unlawful business practices which give rise to this action occurred in this District.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(1) because a substantial part of the events giving rise to this action occurred in this District.

FACTUAL BACKGROUND

I. RETURNED ITEMS UNPAID FEES

15. Returned Items Unpaid Fees are levied when a check is returned because it cannot be processed against the originator's account. In other words, when Person

³ See 2022 Annual Report for SkyOne at 4. Available at: https://www.skyone.org/wp-content/uploads/2023/04/2022AnnualReport_FINAL.pdf (last accessed April 4, 2024).

1 A writes a check to Person B and the check bounces or is returned unpaid, the bank
2 charges Person B a fee even though Person B had no reasonable means of knowing
3 the check would not clear. There are a multitude of reasons why a check someone
4 received would bounce, nearly all of which lie entirely outside the control of the
5 depositor. The reason could be insufficient funds, a stop payment order issued by the
6 check writer, a closed or foreign account, or even a minor discrepancy on the check
7 itself. Even though the depositor has no control over the check, the Returned Item
8 Unpaid Fees charged can range from \$5 to over \$30 and often vastly exceed the
9 actual cost of processing the returned check.

10 16. Returned Items Unpaid Fees are widespread within the banking industry,
11 with most major banks and financial institutions levying them as part of their
12 standard fee structure. The ubiquitous and unavoidable nature of Returned Items
13 Unpaid Fees has raised concerns about the fairness and predatory nature of imposing
14 penalties on the depositor. In fact, these fees are nothing more than veiled revenue-
15 generating tools that penalize innocent depositors for the actions of others.

16 17. Recognizing the potential for abuse, the CFPB issued Bulletin 2022-06
17 on November 7, 2022 (the “Bulletin”). The Bulletin, entitled *Unfair Returned*
18 *Deposited Item Fee Assessment Practices*, highlights the CFPB’s concerns about
19 deceptive practices related to Returned Items Unpaid fees, particularly instances
20 where fees are disproportionate to the actual costs incurred by the bank, or where
21 customers are not adequately informed about the fees and their potential applicability.

22 18. The CFPB deemed these fees unfair under the Consumer Financial
23 Protection Act (“CFPA”). It took issue with financial institutions, like SkyOne, that
24 charge consumers Returned Items Unpaid Fees “for all returned transactions
25 irrespective of the circumstances of the transaction or patterns of behavior on the
26 account.” The Bulletin provides in relevant part:

27 The Consumer Financial Protection Act (CFPA) prohibits
28 covered persons from engaging in unfair acts or practices.
Congress defined an unfair act or practice as one that (A)

1 “causes or is likely to cause substantial injury to consumers
2 which is not reasonably avoidable,” and (B) “such
3 substantial injury is not outweighed by countervailing
benefits to consumers or to competition.”

4 Blanket policies of charging Returned Items Unpaid fees to
5 consumers for all returned transactions irrespective of the
6 circumstances of the transaction or patterns of behavior on
the account are likely unfair.

7 Fees charged for Returned Items Unpaid cause substantial
8 injury to consumers. Under the blanket policies of many
9 depository institutions, Returned Items Unpaid fees cause
10 monetary injury, in the range of \$10-19 for each returned
11 item. **Depository institutions that charge Returned Items
Unpaid fees for returned checks impose concrete
monetary harm on a large number of customers.**

12 In many of the instances in which Returned Items Unpaid
13 fees are charged, consumers would not be able to
14 reasonably avoid the substantial monetary injury imposed
15 by the fees. **An injury is not reasonably avoidable unless
consumers are fully informed of the risk and have
practical means to avoid it.** Under blanket policies of
16 many depository institutions, Returned Items Unpaid fees
17 are charged whenever a check is returned because the check
18 originator has insufficient available funds in their account,
19 the check originator instructs the originating depository
institution to stop payment, or the check is written against a
20 closed account. **But a consumer depositing a check would
normally be unaware of and have little to no control
over whether a check originator has funds in their
account, will issue a stop payment instruction, or has
closed the account.** Nor would a consumer normally be
21 able to verify whether a check will clear with the check
22 originator’s depository institution before depositing the
23 check or be able to pass along the cost of the fee to the
24 check originator.
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1 87 R 66940, 66941 (emphases added).⁴

2 19. The CFPB focused on the lack of benefit to consumers and the
3 disproportionality associated with these fees, finding that “[c]heck processing is a
4 service made broadly available to all depositors of checks, and *there is no separate*
5 *benefit to consumers from having a deposited check returned, as opposed to paid.*”
6 *Id.* The CFPB further found that these fees are *not* “well-tailored to recoup costs”
7 because “the fee is charged to depositors even where the depository institution incurs
8 no such loss from the returned transaction, and institutions usually do not collect the
9 fee in those limited circumstances where they actually incur a loss.” *Id.* Evidently, the
10 CFPB has signaled its intention to impose stricter oversight and raise legal challenges
11 against these unfair and predatory practices.

12 **II. SKYONE IMPOSED A BLANKET “JUNK FEE” ON ALL** 13 **RETURNED DEPOSITS, REGARDLESS OF CAUSE**

14 20. SkyOne offers a diverse range of deposit accounts, including a range of
15 different checking and savings options, to its members like Plaintiff and the putative
16 Class and Subclass members.

17 21. Upon opening a deposit account with SkyOne, each member receives a
18 “General Disclosure Information About All of Our Accounts and Services” document
19 (“Account Agreement”).⁵ The Account Agreement forms the contract between
20 SkyOne and its members and provides the terms and conditions governing each
21 deposit account held with SkyOne. *Id.*

22 22. The Account Agreement contains explanations of the overdraft and
23 nonsufficient fund fees but there is no explanation as to Returned Items Unpaid fees.
24 The Account Agreement states that the information on overdraft and nonsufficient
25 fund fees “is being provided to help you [the member] understand what happens if
26

27 ⁴ The Bulletin is available at <https://www.federalregister.gov/documents/2022/11/07/2022-23933/bulletin-2022-06-unfair-returned-deposited-item-fee-assessment-practices> (last accessed April 14, 2024).

28 ⁵ See SkyOne Account Agreement, effective August 1, 2022, at 3, attached hereto as Exhibit A (“Account Agreement”).

1 your account is overdrawn. Understanding the[se] concepts . . . is important and can
2 help you avoid being assessed fees or charges.” *Id.* at 5. There is no mention of
3 SkyOne’s Returned Items Unpaid fees anywhere in the Account Agreement. The
4 Account Agreement’s inexplicable omission of any mention of Returned Items
5 Unpaid fees stands in stark contrast to the clear explanations provided for other fees.

6 23. While depositing a check, members naturally anticipate receiving the
7 funds. However, factors entirely outside their control can lead to a deposit being
8 returned unpaid. This can occur due to the originator lacking sufficient funds, a stop-
9 payment order issued by the originator, or even processing errors. These
10 unpredictable circumstances can expose the depositor to unfair and unavoidable
11 financial repercussions.

12 24. Members attempting to deposit funds, such as Plaintiff, lacked any
13 control over whether the deposit would be returned and had no way of protecting
14 themselves against the possibility of the deposit being returned and being charged a
15 fee. Depositors could not realistically verify with the originator’s institution whether
16 there were sufficient funds in the issuer’s account before depositing an item.

17 25. Conversely, upon information and belief, SkyOne maintains
18 sophisticated systems to make sure that checks submitted for deposit are valid for
19 processing and that the person or business who wrote the check has sufficient money
20 to pay it. Thus, SkyOne has the capability for determining the reason that a check is
21 not valid and the person or business at fault for any invalid check.

22 26. SkyOne’s blanket policy of charging Returned Items Unpaid fees on all
23 returned deposits, regardless of the origin of the check or the cause of its return, is
24 unfair because it penalizes them for circumstances outside of their control.

25 **III. SKYONE CHARGED PLAINTIFF RETURN RETURNED** 26 **ITEMS UNPAID FEES**

27 27. Jasmine Pronos held a SkyOne deposit account during the applicable
28 limitations period.

1 28. Ms. Pronos' Account was located in the State of Illinois at the time she
2 opened the account and remains so to this day.

3 29. On or around August 7, 2023, Ms. Pronos attempted to deposit a check
4 into her SkyOne account.

5 30. At the time she attempted to deposit the checks into her SkyOne account,
6 Ms. Pronos had no reason to believe that the check would be returned unpaid.

7 31. Several days later, on August 10, 2023, to Ms. Pronos' surprise and by
8 no fault of her own, the check she deposited was returned unpaid. SkyOne charged
9 Ms. Pronos a Returned Items Unpaid fee of \$25.00. The Returned Items Unpaid fee
10 was deducted from the balance of Ms. Pronos' account.

11 32. Because the \$25 Returned Items Unpaid fee which SkyOne charged Ms.
12 Pronos was assessed pursuant to SkyOne's blanket policy of assessing such fees
13 irrespective of the facts and circumstances surrounding her attempt to deposit the
14 check into her account, the Returned Items Unpaid fee was unfair and unlawful.

15 **CLASS DEFINITION AND ALLEGATIONS**

16 33. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3) of the
17 Federal Rules of Civil Procedure on behalf of herself and on behalf of all other
18 persons similarly situated.

19 34. Plaintiff proposes the following Class definitions, subject to amendment
20 as appropriate:

21 **Nationwide Class (the "Class")**

22 All individuals who, during the applicable statute of
23 limitations, had or have accounts with SkyOne and were
24 charged a Returned Items Unpaid fee by SkyOne.

25 **Illinois State Subclass (the "Illinois Subclass")**

26 All individuals who, during the applicable statute of
27 limitations, had or have accounts with SkyOne located in
28 Illinois and were charged a Returned Items Unpaid fee by
SkyOne.

1 35. Excluded from the Class and Subclass are Defendant, its parents,
2 subsidiaries, affiliates, officers and directors, and judicial officers and their
3 immediate family members and associated court staff assigned to this case.

4 36. Plaintiff reserves the right to modify or amend the definitions of the
5 proposed Classes before the Court determines whether certification is appropriate.

6 37. The proposed Class and Subclass meets the criteria for certification
7 under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

8 38. **Numerosity**. This action is appropriately suited for a class action. The
9 members of the Class and Subclass are so numerous that the joinder of all members is
10 impracticable. Plaintiff is informed, believes, and thereon alleges, that the proposed
11 Class and Subclass contains thousands of accountholders who have been damaged by
12 Defendant's conduct as alleged herein, the identity of whom is within the knowledge
13 of Defendant and can be easily determined through Defendant's records.

14 39. **Commonality**. This action involves questions of law and fact common
15 to the Class. The common legal and factual questions include, but are not limited to,
16 the following:

- 17 a. Whether Defendant's assessment of Returned Items Unpaid fees within
18 the applicable statute of limitations was unfair, deceptive, or misleading;
- 19 b. Whether Defendant breached its Implied Covenant of Good Faith and
20 Fair Dealing by assessing Returned Items Unpaid fees on transactions in
21 cases where the accountholder had no reason to believe the deposit
22 would be returned unpaid;
- 23 c. Whether Defendant was unjustly enriched as a result of charging
24 Plaintiff and the Class and Subclass the "Returned Items Unpaid fees";
- 25 d. Whether Plaintiff and the Class suffered damages as a result of
26 Defendant's assessment of Returned Items Unpaid fees;
- 27 e. Whether Defendant's conduct, as alleged herein, constitutes a violation
28 of Illinois' Consumer Fraud and Deceptive Business Practices Act,
codified at 815 Ill. Comp. Stat. 505/1, *et seq.* (the "ICFA") (on behalf of
the Illinois Subclass);
- f. The proper method or methods by which to measure damages and/or
restitution and/or disgorgement; and

1 g. Whether Plaintiff and the Class and Subclass are entitled to declaratory
2 and injunctive relief and the nature of that relief.

3 40. **Typicality**. Plaintiff's claims are typical of the claims of the members of
4 the Class and Subclass, because, *inter alia*, all Class and Subclass members have
5 been injured through the uniform misconduct described above and were charged
6 improper and deceptive fees as alleged herein. Moreover, Plaintiff's claims are
7 typical of the Class and Subclass members' claims because Plaintiff is advancing the
8 same claims and legal theories on behalf of herself and all members of the Class and
9 Subclass. In addition, Plaintiff is entitled to relief under the same causes of action and
10 upon the same facts as the other members of the proposed Class and Subclass.

11 41. **Adequacy of Representation**. Plaintiff will fairly and adequately
12 protect the interests of the members of the Class and Subclass. Plaintiff and members
13 of the Class and Subclass each maintained an account with Defendant and were
14 harmed by Defendant's misconduct in that they were assessed unfair Returned Items
15 Unpaid fees. Plaintiff will fairly and adequately represent and protect the interests of
16 the Class and Subclass and has retained competent counsel experienced in complex
17 litigation and class action litigation. Plaintiff has no interests antagonistic to those of
18 the Class or Subclass, and Defendant has no defenses unique to Plaintiff.

19 42. **Superiority**. A class action is superior to other methods for the fair and
20 efficient adjudication of this controversy. The damages or other financial detriment
21 suffered by individual Class and Subclass members is relatively small compared to
22 the burden and expense that would be entailed by individual litigation of their claims
23 against Defendant. It would be virtually impossible for a member of the Class or the
24 Subclass, on an individual basis, to obtain effective redress for the wrongs done to
25 him or her. Further, even if the Class or Subclass members could afford such
26 individualized litigation, the court system could not. Individualized litigation would
27 create the danger of inconsistent or contradictory judgments arising from the same set
28 of facts. Individualized litigation would also increase the delay and expense to all

1 parties and the court system from the issues raised by this action. By contrast, the
2 class action device provides the benefits of adjudication of these issues in a single
3 proceeding, economies of scale, and comprehensive supervision by a single court,
4 and presents no management difficulties under the circumstances here.

5 43. Plaintiff seeks monetary damages, including compensatory damages on
6 behalf of the Class and Subclass, and other equitable relief on grounds generally
7 applicable to the entire Class and Subclass. Unless a Class and Subclass are certified,
8 Defendant will be allowed to profit from its unfair and unlawful practices, while
9 Plaintiff and the members of the Class and Subclass will have suffered damages.
10 Unless a Class-wide injunction is issued, Defendant may continue to benefit from the
11 violations alleged, and the members of the Class and Subclass and the general public
12 may continue to be unfairly treated.

13 44. Defendant has acted and refused to act on grounds generally applicable
14 to the Class and Subclass, making final injunctive relief appropriate with respect to
15 the Class and Subclass as a whole.

16 **COUNT I**
17 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
18 **DEALING**
(On behalf of Plaintiff and the Class)

19 45. Plaintiff repeats and realleges each and every allegation contained in
20 paragraphs 1- 44 as if fully set forth herein.

21 46. Plaintiff brings this claim individually and on behalf of the members of
22 the Class against Defendant.

23 47. A covenant of good faith and fair dealing is implied in Plaintiff's and the
24 Class members' Account Agreements with Defendant. Whether by common law or
25 statute, all contracts impose upon each party a duty of good faith and fair dealing.
26 Good faith and fair dealing, in connection with executing contracts and discharging
27 performance and other duties according to their terms, means preserving the spirit —
28 not merely the letter — of the bargain. Thus, the parties to a contract are mutually

1 obligated to comply with the substance of their contract in addition to its form.
2 Evading the spirit of the bargain and abusing the power to specify terms constitute
3 examples of bad faith in the performance of contracts.

4 48. The material terms of the Account Agreement therefore included the
5 implied covenant of good faith and fair dealing, whereby Defendant covenanted that
6 it would, in good faith and in the exercise of fair dealing, deal with Plaintiff and each
7 member of the Class fairly and honestly and do nothing to impair, interfere with,
8 hinder, or potentially injure Plaintiff and the Class members' rights and benefits
9 under the contract.

10 49. Plaintiff and the Class members have performed all conditions,
11 covenants, and promises required by each of them on their part to be performed in
12 accordance with the terms and conditions of the contract, except for those they were
13 prevented from performing or which were waived or excused by Defendant's
14 misconduct.

15 50. As alleged herein, Defendant breached the implied covenant of good
16 faith and fair dealing by systematically charging Plaintiff and the Class members'
17 Returned Items Unpaid fees for attempting to deposit checks that could not be
18 deposited irrespective of the facts and circumstances surrounding the accountholder's
19 attempt to deposit the check into their account.

20 51. Defendant's actions to maximize its revenue from Returned Items
21 Unpaid fees impedes the right of Plaintiff and other members of the Class to receive
22 benefits that they reasonably expected to receive under the contract, as the money
23 entrusted to Defendant for their banking activities was reduced.

24 52. On information and belief, Defendant's actions as alleged herein were
25 performed in bad faith, in that the purpose behind the practices and policies alleged
26 herein was to maximize Defendant's revenue from Returned Items Unpaid fees at the
27 expense of their customers, in contravention of Plaintiff's and the Class members'
28 reasonable expectations.

1 53. Plaintiff and members of the Class have sustained damages as a result of
2 Defendant's conduct as alleged herein.

3 54. As a direct and proximate result of Defendant's breach of the implied
4 covenant of good faith and fair dealing, Plaintiff and the Class members have been
5 damaged in an amount to be proven at trial and seek relief as set forth in the Prayer
6 below.

7 **COUNT II**
8 **UNJUST ENRICHMENT**
9 **(On behalf of Plaintiff and the Class)**
10 ***(Plead in the alternative to Count I)***

11 55. Plaintiff repeats and realleges each and every allegation contained in
12 paragraphs 1–54 as if fully set forth herein.

13 56. Plaintiff brings this claim individually and on behalf of the members of
14 the Class against Defendant.

15 57. Plaintiff and the members of the Class conferred a benefit on Defendant,
16 which Defendant knew about, when they enrolled in Defendant's deposit accounts
17 and were charged Returned Items Unpaid fees.

18 58. Plaintiff and members of the Class were, and many continue to be,
19 members of Defendant with deposit accounts. They reasonably believed that SkyOne
20 would not charge them unreasonable fees beyond their control. Plaintiff and members
21 of the Class suffered financial losses when they were charged Returned Items Unpaid
22 fees in the form of funds deducted from their accounts.

23 59. By charging Returned Items Unpaid fees, Defendant unjustly enriched
24 itself by taking a benefit, in the form of a \$25 charge each time an item was returned,
25 from each of their customers' accounts, regardless of their own action, without
26 providing any additional service or value to their customers, including Plaintiff and
27 members of the Class. Defendant has accepted and retained these benefits even
28 though it failed to provide any service or product to its customers and failed to
provide any manner to avoid these fees, making Defendant's retention of them unjust.

60. By its wrongful acts and omission described herein, including charging fees for actions beyond the customer's control, and for which consumers had absolutely no way of avoiding, Defendant was unjustly enriched at the expense of Plaintiff and the members of the Class.

61. Plaintiff's and the Class's detriment, and Defendant's enrichment, were related to and flowed from the wrongful conduct alleged in this Complaint.

62. Defendant has profited from its unlawful, unfair, misleading, and deceptive practices at the expense of Plaintiff and the putative Class members. It would be inequitable for Defendant to retain the profits, benefits, and other compensation obtained from its wrongful conduct described herein.

63. Plaintiff and the members of the Class have been damaged as a direct and proximate result of Defendant's unjust enrichment.

64. Plaintiff and the members of the Class are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant.

65. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and the members of the Class are entitled to restitution of, disgorgement of, and/or imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendant for its inequitable and unlawful conduct.

COUNT III
VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE
BUSINESS PRACTICES ACT ("ICFA")
815 Ill. Comp. Stat. ("ILCS") 505/1, *et seq.*
(Plaintiff Pronos on behalf of herself and the Illinois Subclass)

66. Plaintiff Pronos repeats and realleges each and every allegation contained in paragraphs 1–65 as if fully set forth herein.

67. Plaintiff Pronos brings this claim individually and on behalf of the members of the Illinois Subclass against Defendant.

68. Plaintiff Pronos maintains a SkyOne account located in Illinois.

69. Plaintiff Pronos and the Illinois Subclass members are persons within the context of the ICFA, 815 ILCS 505/1(c), and Defendant is a person within the context of the ICFA, 815 ILCS 505/1(c).

70. At all times relevant hereto, Defendant was engaged in trade or commerce as defined under the ICFA, 815 ILCS 505/1(f).

71. Plaintiff Pronos and the proposed Illinois Subclass are “consumers” within the meaning of the ICFA, 815 ILCS 505/1(e).

72. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices, including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the Uniform Deceptive Trade Practices Act (“UDTPA”). 815 ILCS 505/2. This includes conduct that “creates a likelihood of confusion or misunderstanding” irrespective of whether the person has been in fact misled, deceived, or damaged thereby. 815 ILCS 505/2; 815 ILCS 510/2(a)(12).

73. The ICFA “is a regulatory and remedial statute intended to protect consumers . . . against fraud, unfair methods of competition, and other unfair and deceptive business practices.” *Windy City Metal Fabricators & Supply, Inc. v. CIT Technology Financing Services*, 536 F.3d 663, 666 (7th Cir. 2008) (citing the Illinois Supreme Court’s holding in *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403 (Ill. 2022)).

74. The ICFA provides a broad private right of action for “[a]ny person who suffers actual damage as a result of a violation of this Act” and enables such person to bring an action against any business entity that violates the statute. 815 ILCS 505/10a(a); 815 ILCS 505/1(c). In addition, the ICFA provides for injunctive relief where appropriate as well as reasonable attorney’s fees and costs. 815 ILCS 505/10a(c).

75. Defendant charged Returned Items Unpaid fees in the regular course of

1 its business and in the course of conducting trade and commerce and charged Plaintiff
2 Pronos a Returned Items Unpaid fee in the course of conducting trade and commerce.
3 Defendant unilaterally imposed such charges on Plaintiff Pronos and the members of
4 the Illinois Subclass members.

5 76. Under the CFPA, an “unfair” act or practice is one that “causes or is
6 likely to cause substantial injury to consumers which is not reasonably avoidable,”
7 and “such substantial injury is not outweighed by countervailing benefits to
8 consumers or to competition.” 12 U.S.C. § 5531(c)(1).

9 77. The CFPB — through Bulletin 2022-06 — has determined that Returned
10 Items Unpaid fees, such as those charged by SkyOne, are materially unfair and
11 deceptive because they cause substantial injury to consumers and fall within the
12 CFPA’s definition of unfair acts and practices because such fees cause substantial
13 financial injury to accountholders, are not reasonably avoidable by accountholders,
14 and do not provide a benefit that outweighs the injury they cause.

15 78. Thus, pursuant to the CFPB’s Bulletin 2022-06, Defendant’s practice of
16 charging Returned Items Unpaid fees is deceptive and unfair and constitutes a
17 violation of the ICFA.

18 79. Plaintiff Pronos and all Illinois Subclass members sustained actual
19 damages as a result of Defendant’s unfair practice. The actual damages sustained by
20 Plaintiff Pronos and all Illinois Subclass members were caused by Defendant’s unfair
21 practice of charging Returned Items Unpaid fees. In other words, had Defendant not
22 engaged in the unfair practice of charging Returned Items Unpaid fees, Plaintiff
23 Pronos and the Illinois Subclass members would not have sustained damages. The
24 actual damage is measured by the amount of the Returned Items Unpaid fees charged
25 by Defendant.

26 80. By reason of the foregoing, Defendant’s conduct, as alleged herein,
27 constitutes an unfair practice committed in the course of trade and commerce,
28 intended to be relied upon by accountholders, that proximately caused actual damages

1 to Plaintiff Pronos and the Illinois Subclass, in violation of 815 ILCS 505/2, and
2 Defendant is liable to Plaintiff Pronos and the Illinois Subclass for the damages they
3 have sustained as a result of Defendant's actions.

4 81. Based on Defendant's unfair and/or deceptive acts or practices, Plaintiff
5 and the Illinois Subclass are entitled to relief, including restitution, actual damages,
6 treble damages, punitive damages, costs, and attorneys' fees under 815 ILCS
7 505/10a.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff, on behalf of herself and all others similarly situated,
10 respectfully requests that the Court enter judgment against Defendant in the form of
11 an Order:

12 A. Certifying this action as a class action under Rule 23(b)(2) and (b)(3) of
13 the Federal Rules of Civil Procedure and naming Plaintiff as a representative of the
14 Class and Plaintiff's undersigned attorneys as Class Counsel to represent the Class
15 Members;

16 B. Naming Plaintiff Pronos as the representative of the Illinois Subclass;

17 C. Declaring that Defendant's conduct violated the laws referenced herein;

18 D. Finding in favor of Plaintiff and the Class and Subclass on all counts
19 asserted herein;

20 E. Awarding actual, consequential, punitive, statutory, and treble damages
21 as applicable;

22 F. Awarding pre-judgment and post-judgment interest on all amounts
23 awarded;

24 G. For injunctive relief as pleaded or as the Court may deem proper;

25 H. For disgorgement and restitution to Plaintiff and the Class and/or
26 Subclass members of all monies received or collected from Plaintiff and the Class
27 and/or Subclass members and all other forms of equitable relief;
28

1 I. Awarding Plaintiff and the Class and Subclass reasonable attorneys' fees
2 and expenses and costs of suit;

3 J. Awarding damages in an amount to be determined at trial; and

4 K. For such other and further relief as the Court may deem proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands trial by jury as to all triable issues.

7
8 DATED: April 18, 2024

Respectfully submitted,

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10
11 By: /s/Kyle D. McLean

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